IN THE
SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

---

Nos. 81-1-32 & 81-1-79

---

IN RE: ESTATE OF PAUL CIAFFONI,
Deceased

---

Appeal of ROBERT J. CIAFFONI
(Decedent's son)

---

Appeals from the decrees of the Orphans' Court Division of the Court of Common Pleas of Washington County at No. 63-74-942, dated December 16, 1980, and July 2, 1981.

---

ARGUED: January 18, 1982.

---

## OPINION OF THE COURT

PER CURIAM: FILED: MAY 20, 1982

We shall treat this matter as an application pursuant to Pa. R.A.P. 105(a) for modification of the Rules of Appellate Procedure to allow a second application for re-argument. See *Aiken Industries, Inc. v. Wilson*, 482 Pa. 625, 394 A.2d 497 (1978); *United States v. Ohio Power Co.*, 353 U.S. 98, 77 S.Ct. 652 (1957). See also Pa. O.C. Rule 2.1.

On their direct appeal, appellants challenged the decree of the Orphans' Court Division of the Court of Common Pleas of Washington County upholding the validity of the probated will of decedent Paul Ciaffoni against a claim that pages of the will had been fraudulently substituted after its execution. Appellants argued that the orphans' court had improperly ruled inadmissible some forty probated wills of other decedents, both predating and postdating the decedent's will, which had been drafted by the purported scrivener of the decedent's will and typed by the scrivener's secretary. Appellants had sought to establish that elements of style common to these wills were absent from the decedent's will. The exclusion of these comparison wills resulted in the disallowance of expert testimony which would have explained the significance of the stylistic deviations. The exclusion also contributed to the disallowance of extrinsic evidence relating to the challenged will, including declarations of the testator. This Court affirmed the decree per curiam, without opinion; it then denied a petition for reargument. 491 Pa. 46, 417 A.2d 1136 (1980).*

Shortly after the denial of reargument, appellants filed a "Motion for New Trial, Nunc Pro Tunc," with the orphans' court. That motion was denied, as was a subsequent motion for a new trial. These appeals followed.

After a re-examination of the record of the will contest hearings, we are convinced that the excluded wills were properly offered in support of appellants' claim that pages of the challenged will had been fraudulently substituted. See *Lare Will*, 352 Pa. 323, 42 A.2d 801 (1945); *Kane Estate*, 312 Pa. 531, 168 A. 681 (1933). See gen-

* Mr. Justice Flaherty did not participate in the consideration or decision of the case or of the petition for reargument. Mr. Justice Roberts filed a dissenting opinion and dissented from the denial of reargument.

erally *Baldridge v. Matthews*, 378 Pa. 566, 106 A.2d 809 (1954); 1 Wigmore on Evidence § 92 (3d ed. 1940). Because there has been no final distribution pursuant to the probated will, the interests of justice require that appellants be afforded an opportunity to present their evidence of fraud to a factfinder.

Application granted. The order of this Court denying reargument is reversed; the order affirming the decree of the orphans' court is vacated. The decree of the orphans' court upholding the validity of decedent's will is vacated and the record remanded for proceedings consistent with this opinion. Costs to be borne by the estate.

Mr. Justice FLAHERTY did not participate in the consideration or decision of this case.

SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

---

No. 121 MARCH TERM, 1979

---

ESTATE OF PAUL CIAFFONI, DECEASED

APPEAL OF: Concetta Ciaffoni, (decedent's widow), Robert J. Ciaffoni (decedent's son), and Margaret Ciaffoni Soviero (decedent's daughter)

JUDGMENT

---

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of COMMON PLEAS OF WASHINGTON County, be, and the same is hereby affirmed.

By THE COURT:

/s/ SALLY MRVOS
Sally Mrvos, Esquire
Prothonotary

Dated: April 30, 1980

IN THE
SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

No. 121 March Term 1979

IN RE:
ESTATE OF PAUL CIAFFONI, DECEASED

APPEAL OF:
CONCETTA CIAFFONI, DECEDENT'S WIDOW, ROBERT J. CIAFFONI, DECEDENT'S SON, and MARGARET CIAFFONI SOVIERO, DECEDENT'S DAUGHTER

Appeal from the Decree of the Orphans' Court Division of the Court of Common Pleas of Washington County, at No. 63-74-942

Entered: September 11, 1979

## OPINION

FILED: APRIL 30 1980

PER CURIAM:

Decree affirmed. Each party to pay own costs.

Mr. Justice Flaherty took no part in the consideration or decision of this case.

Mr. Justice Roberts filed a dissenting opinion.

IN THE
SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

---

No. 121 March Term 1979

---

ESTATE OF PAUL CIAFFONI, Deceased

APPEAL OF CONCETTA CIAFFONI, Decedent's widow, ROBERT J. CIAFFONI, Decedent's son, and MARGARET CIAFFONI SOVIERO, Decedent's daughter

---

Appeal from Order of the Orphans' Court Division of the Court of Common Pleas of Washington County, Pennsylvania, at No. 63-74-942

---

**DISSENTING OPINION**

FILED: APRIL 30 1980

ROBERTS, *J.*

This is an appeal from the probate of the will of decedent Paul Ciaffoni. Presented is the question whether evidence of fraud proffered by appellants was improperly ruled inadmissible by the orphans' court. The majority of this Court finds no error in this evidentiary ruling and summarily affirms. I dissent.

Paul Ciaffoni, a resident of Washington County, died on September 23, 1974. Decedent's widow Concetta Ciaffoni, seven children and twenty-three grandchildren survived him. Appellants Concetta Ciaffoni and two children, Robert J. Ciaffoni and Margaret Ciaffoni Soviero, challenged probate of a document dated May

10, 1968. They alleged that certain pages of the seven page document had been fraudulently substituted following execution. At the probate hearing, appellants sought to establish their allegation of fraud by introducing approximately forty previously probated wills, drafted by the same scrivener and typed in the scrivener's office, to show discrepancies between these comparison wills and the document offered for probate. The orphans' court excluded this evidence, withdrew the case from the advisory jury and entered a decree in favor of the validity of the challenged document. Appellants took this appeal from the decree.

The orphans' court excluded the forty previously probated comparison wills because, in its view, testimony of the scrivener made it "obvious that any differences in typing or word use that the jury may have found among all those wills simply have no probative value in the Ciaffoni case." It is not disputed, however, that the scrivener drafted the probated comparison wills. Furthermore, the proponents of the will offered the testimony of the scrivener and his secretary that they prepared the challenged document now offered for probate.

This record and the previous decisions of this Court satisfy me that the orphans' court's exclusion of the probated comparison wills was erroneous. In deciding the question of admissibility, the court must consider whether the evidence sought to be admitted has probative value and is material to the issues in the case. I Wigmore on Evidence, § 10 (3d ed. 19040). Appellants offered the probated comparison wills as evidence of the scrivener's established practice in drafting testamentary documents. As this Court has stated, "[o]f the probative value of a person's habit or custom, as showing the doing on a specific occasion of the act which is the subject of the habit or custom, there can be no doubt." *Baldridge v. Mat-*

*thews*, 378 Pa. 566, 570, 106 A.2d 809, 811 (1954) (quoting, I Wigmore on Evidence, § 92 (3d ed. 1940)). Accord, McCormick on Evidence, § 195 (2d ed. 1972). In this case, appellants' introduction of a large number of probated comparison wills would permit the fact-finder an opportunity to compare the allegedly substituted pages of the document offered for probate with this scrivener's previously probated wills. Surely this evidence is probative on the material issue of fraudulent substitution of pages presented in this case. See also Moore, *Testimony of the Expert Document Examiner*, 22 U. Pitt. L. Rev. 675 (1961). Thus, the orphans' court's improper exclusion of this evidence denied appellants their right to establish the issue of fraudulent substitution of pages, and precluded the factfinder from exercising its function of examining these probated comparison wills and determining the genuineness of the allegedly substituted pages.

The orphans' court's exclusion of this evidence is contrary to the rulings of this Court in *Lare Will*, 352 Pa. 323, 42 A.2d 801 (1945) and *Kane's Estate*, 312 Pa. 531, 168 A. 681 (1933). In *Lare Will*, this Court similarly compared typewriting samples in deciding that a substantial factual dispute had been raised by this evidence and that the orphans' court improperly "assumed the province of [the] jury" in deciding the issue. Such evidence was considered sufficiently probative to require consideration by the fact-finder. Likewise in *Kane's Estate*, this Court approved use of typewriting samples for comparison with a challenged document. It is clear from this Court's decision in *Kane's Estate* that the comparison evidence was considered probative and material as we held that evidence sufficient to support the Chancellor's findings. See also 42 Pa.C.S. § 6111 (expert testimony permitted to make comparison of documents).

Until today's order, this Court's rule in cases involving fraud has always permitted the widest possible latitude in the admission of evidence. *Young Estate*, 347 Pa. 457, 32 A.2d 901 (1943); *Lappe v. Gfeller*, 211 Pa. 462, 60 A. 1049 (1905). Because the probated comparison wills appellants sought to introduce have probative value with respect to appellants' allegation of fraud under these decisions it is clear that the orphans' court erred in excluding this evidence. Additionally, appellants attempted to establish fraud by introducing expert testimony regarding the misalignment of indentations on the backer of the document offered for probate, statements of the decedent regarding the provisions of the document, and statements of a beneficiary regarding that individual's understanding of the testamentary dispositions. In light of my views on the issue of excluding evidence of probated comparison wills, I do not address the merits of these issues.

Accordingly, I would vacate the decree and remand for a new probate hearing.

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

SALLY MAVOS
Prothonotary
IRMA T. GARDNER
Deputy Prothonotary

801 City-County Building
Pittsburgh, Pa.
15219

June 26, 1980

Mr. Robert J. Ciaffoni
311 Crawford Street
Canonsburg, PA 15317

In Re: Estate of Paul Ciaffoni, deceased
No. 121 March Term, 1979

---

Dear Mr. Ciaffoni:

The Court has entered the following order on your Application for Reargument:

6/16/80
Denied.

By The Court

Mr. Justice Roberts would grant."

Very truly yours,
/s/ IRMA T. GARDNER
*Deputy Prothonotary*

ITG:ml
cc: Milton D. Rosenberg, Esq.
Richard Sprague, Esq.
Robert L. Ceisler, Esq.
Joseph M. Ludwig, Esq.
James R. Beam, Esq.

P.S. This is to replace the letter of June 24, 1980 which was inadvertently put on Superior Court letterhead.

IN THE
COURT OF COMMON PLEAS
OF WASHINGTON COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

No. 63 74 942

IN RE:
ESTATE OF PAUL CIAFFONI, Deceased

## OPINION AND DECREE

BY THE COURT,

(OPINION BY KEIM, *J.*)

This matter is presently before the Court upon exceptions filed on behalf of contestants excepting to various evidentiary rulings as well as the Order of Court withdrawing the case from the Jury, dismissing the appeals from probate, and finding in favor of the probated document.

### I. HISTORY OF THE CASE

Paul Ciaffoni died on September 23, 1974, a resident of Washington County, Pennsylvania, survived by his widow, Concetta Ciaffoni, by seven children and twenty-three grandchildren.

On December 16, 1974, the Register of Wills of Washington County admitted to probate a document dated May 10, 1968, which was offered for Probate by Elizabeth Cowden. Letters testamentary were granted to Elizabeth Ciaffoni Cowden and Concetta Ciaffoni. Robert Ciaffoni disqualified himself from being a co-executor. December 11, 1975, decedent's daughter, Margaret Ciaffoni Soviero, filed her appeal from probate. On December 9, 1976,

decedent's widow Concetta Ciaffoni, and defendant's son, Robert Ciaffoni, filed their separate appeals from probate. By Order entered January 31, 1977, Judge Paul A. Simmons, then presiding over the Orphans' Court Division of Washington County ordered the appeals filed by Concetta Ciaffoni and Robert Ciaffoni consolidated with the appeal of Margaret Ciaffoni Soviero.

On August 1, 1978, an amended appeal from Probate of Decedent's will was filed on behalf of Concetta Ciaffoni and Robert J. Ciaffoni.

On October 18, 1977, Judge Simmons disqualified himself from presiding at the hearing of this will contest, subsequently the Supreme Court of Pennsylvania appointed this Court to specially preside over the will appeal.

An advisory jury was impaneled to hear the appeal and trial began September 18, 1978, continuing until September 25, 1978. Proponents produced the attorney-scrivener, the Honorable Richard DiSalle, now a Judge of the Commonwealth Court of Pennsylvania. Judge DiSalle identified all the pages of decedent's will presently on file as written by him according to directions and descriptions of the testator, Paul Ciaffoni. Judge DiSalle testified that decedent's Will consisted of a series of revisions made by Paul Ciaffoni to a prior Will of his dated 1967 and also written by Judge DiSalle. The 1967 Will itself was based upon Paul Ciaffoni's prior 1965 Will written, not by Judge DiSalle, but by an attorney named Patrick Derrico. Judge DiSalle further testified that in January of 1968, Paul Ciaffoni came to Judge DiSalle's office to make changes in the 1967 Will. Judge DiSalle produced two yellow note sheets and a copy of the 1967 Will containing more notes of decedent's instructions on the disposition of his property. Judge DiSalle then related how decedent changed dispositions of his property among his various family members. Judge DiSalle's then secre-

tary, Francis Gray, typed the new Will and made two copies which remained in the Judge's law office.

Judge DiSalle further testified that on May 10, 1968, he went to an accountants' meeting at decedent's office. After that meeting, decedent decided to sign his Will, so Judge DiSalle instructed his secretary to bring the Will to decedent's office. The changes were read to decedent. Judge DiSalle then assembled the other subscribing witnesses, after which the testator signed his Will.

Proponents called the two other subscribing witnesses, Patricia McFarlane and Francis Gray. Mrs. Gray testified that she brought decedent's Will to his office in response to a telephone call from Judge DiSalle. She stated the decedent signed the Will in her presence with the other two subscribing witnesses attending. Mrs. McFarlane then an employee at decedent's office, also testified to decedent's execution of the Will in the presence of herself, Judge DiSalle and Francis Gray. Each subscribing witness is disinterested, receiving nothing under decedent's Will.

Contestants offered no evidence to challenge the validity of decedent's signature. Contestants offered testimony of alleged experts propounding unproven and concededly "novel" theories, which was ruled inadmissible. Results offered by contestants from a machine developed within several months of trial were similarly excluded. Contestants' offer of decedent's declarations on the issue of forgery was also rejected because contestants could offer no independent admissible evidence of forgery.

Contestants then elected to rest their case.

Since no issue of fact was then in contest, the Court withdrew the case from the advisory jury, dismissed the appeals from probate, and entered an Order in favor of the validity of the probated Will of Paul Ciaffoni.

At that time, this Court directed that argument on contestants' exceptions proceed before a Court en Banc consisting of this Court sitting alone. Exceptions were filed by contestants on December 29, 1978. The Court then set February 21, 1979 for oral arguments on its exceptions. Briefs were subsequently submitted and the Court has reviewed those briefs and considered oral arguments made.

## II. Discussion

1. In their first exception, contestants object to the exclusion of over fifty wills they claim were prepared by Judge DiSalle and typed by Francis Gray. The contestants claim that the admission of these other wills was for the purpose of comparing traits and authorship between the will at issue and these other fifty wills.

First, contestants made no showing that each of those wills was typed by Mrs. Gray. The testimony showed that Mrs. Gray had no regular schedule for taking vacations and that she was replaced by substitutes when she went on vacation or was ill. It would be impossible for the Jury to reach meaningful conclusions as to Mrs. Gray's typing style on the basis of samples that may not even have been typed by Mrs. Gray.

Secondly, that a jury could readily observe and make comparisons among all of these wills as contestants claim is highly doubtful. Contestants point to no clearly distinguishable habits of either Judge DiSalle or Mrs. Gray as standards for comparison. The comparison documents, themselves, are not written by using characteristic and identifiable expressions of speech, but rather are written in formal legal style using legal terms of art. Further, the testimony showed that Mrs. Gray actually altered her typing habits for longer documents. The Ciaffoni Will is seven pages long as compared with the wills offered by

contestants which are typically two or three pages long. Similarly, Judge DiSalle testified that there was no set style, form or practice established for typing in his office; to the contrary, he offered to produce papers from his office showing discrepancies in typing style.

In light of that testimony, it is obvious that any differences in typing or word use that the jury may have found among all those wills simply have no probative value in the Ciaffoni case. Since the testimony show that differences in typing and word use should be expected, no logical inferences are possible from the discovery of any differences among the wills offered for examination. In particular, no inference as to the identity of the scrivener or the typist of decedent's will could properly have been drawn.

Further, the confusion and delay which would result from such evidence is itself grounds to exclude that evidence. In their examination of all those wills, the jurors' attention would have been distracted from the primary issue of the trial which was the validity of one will, decedent's will, to myriad collateral issues concerning over fifty wills. Certainly, the author and typist of each of those more than fifty wills would have had to be established before the wills could have been used by the jury as a basis of comparison. Thus, the jury would have had to make a finding on those issues for each of the more than fifty wills before making its findings as to the authorship and the identity of the typist of decedent's Will.

Contestants' claim that the Court's ruling was contrary to law overlooks fundamental distinctions between their only cited case, *Kane's* estate, 312 Pa. 531 (1933), and the *Ciaffoni* case. In *Kane,* supra, an actual courtroom demonstration by the alleged typist showed his typical way of accommodating to a deficiency in a particular

typewriter. It was this directly observed characteristic, reinforced through other documents, that the Court used as a basis to compare the typing on the questioned document. No such directly observable characteristics were available in the *Ciaffoni* case, rather, the jury would have seen only a mass of documents with no standard to use for its comparisons.

In addition, it should be noted that the will in question was apparently styled after a prior will drafted for decedent by another attorney. Therefore, the Court believes the other wills offered by contestants could not be compared to the will in question and would be without probative value.

2. The second question raised by contestants in their brief deals with Exceptions two, three and four, which basically deals with the Court's refusal to admit testimony of experts as to the typing and linguistic style in the questioned will compared with all other Di-Salle-Gray probated wills.

Exception 2 summarizes the offer by contestants to produce testimony by Jon A. Shank, a professor of business typing, as to his expert analysis of 39 typing elements in the questioned document of May 10, 1968 (and in the alledged prior document of November 29, 1967) with the other Di-Salle-Gray wills, dated both prior to and subsequent to May 10, 1968, which evidence the Court refused.

Exception 3 summarizes contestants' offer to produce testimony by Andrew Q. Morton, an expert whose testimony has been ruled admissible in criminal cases in England. Andrew Q. Morton examined all other Di-Salle-Gray wills, both prior to and subsequent to May 10, 1968 and compared the use of language in those documents with both the May 10, 1968 questioned document and the November 29, 1967 document and concluded that "the

habits in the disputed will of May 10, 1968 and the draft will of November 29, 1967 are so different that these cannot be regarded as a product of the Di-Salle-Gray combination." The Court refused to admit such testimony.

Exception 4 sets forth contestants' offer to produce the testimony of Robert Parslow, a professor of linguistics, who compared the same documents and analyzed the consistency or lack of consistency in the use of capital letters in legatees' names, the manner in which real estate is described, and in the use of such phrases as "in fee simple", "give, devise and bequeath", "known as" and the words used in the mineral reserve clause. Again, the Court refused such evidence.

Contestants offer Jon A. Shank for his analysis of thirty-nine typing elements. Contestants, however, do not state whether each of the comparison wills as well as decedent's Will contain all of those elements. Certainly, a typing element that occurs once in one comparison will but occurs somewhat differently in decedent's will proves absolutely nothing. Further, contestants never discuss in their offer of proof whether their list of thirty-nine elements is in fact a complete list of all elements necessary to properly identify a typist.

Robert Parslow is offered for his analysis of the occurrence of seven phrases in the comparison wills and in decedent's Will. As with Shank, whether analysis of only those seven phrases suffices to infer authorship is missing from contestants' offer of proof. Further, it is doubtful that Parslow, and, for that matter, each of the other experts, compared decedent's Will with every other known will prepared by Judge DiSalle and typed by Francis Gray, as contestants claim, since, in their offer of proof as to each expert, contestants cite the number of comparison wills as forty-seven, (forty-one predating decedent's Will, six postdating that Will), while fifty-six wills are listed by

contestants in their offer of proof of the wills. Andrew Q. Morton's testimony was offered for his comparison of the "use of language" in the comparison wills and decedent's will and for his conclusions as to differences in "habits" he claims to have found. Utterly no attempt was made by contestants in their offer of proof to specify which uses of language were examined by Morton, which so-called "habits" were discovered, or even how Morton determined a "habit" from a "non-habit".

Contestants' statement that no attack was made upon the qualifications of the witnesses is misleading in its implications. The issue of the qualifications of these "experts" was never reached because the evidence was excluded on other grounds.

Contestants offer two arguments for the admissibility of their evidence; first, that there is statutory authority for the admission of that evidence, and, secondly, that four cases cited by them shows that "similar" evidence had been admitted before in other will contests. However, neither of those arguments can withstand scrutiny.

The statutes cited by contestants do not support the admission of contestants' evidence because those statutes merely change the prior law that experts were not competent to compare disputed with admittedly genuine handwriting. *Foster v. Collner*, 107 Pa. 305 (1884). See *Travis v. Brown*, 43 Pa. 9 (1892); in re *Rocky's Estate*, 155 Pa. 453 (1893). However, those statutes do not affect the other requirements of admissibility of scientific evidence which contestants' evidence violate such as the necessity to show the reliability of the scientific principles used by experts and to show the reliability of the techniques an expert has employed.

In short, the problems with the proposed "expert" testimony offered by contestants goes directly to the reli-

ability of the techniques used by contestants' experts in forming their conclusion in the instant case. Contestants' inability to supply the Court with information sufficient to make a judgment as to the validity and reliability of techniques employed by their "experts" as well as to make a judgment as to the reliability of the scientific principles used, compels exclusion of the testimony by each of contestants' "experts".

The third question raised by contestants in their brief, deals with Exception No. 5.

In Exception No. 5, contestants argue that the Court improperly excluded the testimony of Robert Freeman and the results of tests on the ESDA machine and the testimony of Paul Osborn concerning indentations found on the backer of decedent's Will.

Although this Court was favorably impressed with the ESDA machine test, it is clear that the results of the ESDA machine's operations are at present inadmissible.

The work product of the ESDA machine is inadmissible because the ESDA cannot meet the standard of general acceptance in the scientific community required by the Supreme Court of Pennsylvania in *Commonwealth v. Topa*, 471 Pa. 223 (1977).

Furthermore and of more significance to this Court, both the testimony of Mr. Freeman and Mr. Osborn is inadmissible for the reason that both men agree that the evidence produced by the ESDA machine could have been interpreted in either of two ways.

At an in camera hearing held September 20, 1978, contestants' expert, Paul Osborn, testified as follows in response to questioning by counsel for contestants:

> "Q. Mr. Osborn, with respect to the misalignment, both horizontal and vertical, of all the writing on page seven, with the indentations of the writing

on page seven, one with another, have you any explanation as to how much misalignment could occur?

A. Yes.

Q. Is there more than one explanation for such misalignment?

A. Yes.

Q. Could you tell us whatever number of explanations occur to you, explaining each one of those possibilities to us?

A. Yes.

Q. Would you please?

A. One, it occurs to me from examining the original will in its present state, bound with three grommets at the top, that pages seven and the backing are of such a nature that page seven and the backing can be moved in various directions very simply, despite the fact that they are bound, and that five different writings, including the date and four signatures, could quite possibly have caused a variance in the indentations on the backing when they were written on page seven, despite the fact that page seven and the backing were grometted together in their position. The other explanation is that these variances in the indentations on the backing as compared to the signatures could have been due to the fact that the pages were not bound together with the backing in its present condition. In any event, the variations in the backing as compared to the signatures are each unlike the other variations, as each lineup is made. And as a result of that, I find no real evidence indicating what the situation was when those signatures were made.

Q. You could not choose between those two possible Alternatives?

A. No.

In light of Paul Osborn's testimony, the Court's exclusion of that evidence is not contrary to *Kane's Estate:* 312 Pa. 531 (1933), *Lare Will,* 352 Pa. 323 (1945); or *Cutler Estate* (No. 2), 33 D & C 2d 682 (1964), cited by contestants at pages 20 and 21 of their brief. Contestants cite those cases as authority for the admission of evidence of misalignment in the instant case. However, those cases are simply inapplicable to the *Ciaffoni* case because the issue in the instant case is the relevance of those misalignments found on Freeman's ESDA machine to proving any fact in the case at bar, not the general admissibility of such evidence.

The fourth question raised in contestants' brief corresponds with Exception No. 6, which deals with exclusion of declarations of the decedent offered on the issue of forgery. Contestants argue that they should have been permitted to offer evidence of statements by the testator that he never signed any document containing provisions which exist in the question probated document. The rule to which contestants refer, and which the Court applied, is stated in the case of *Swope v. Donnelly,* 190 Pa. 417 (1899), and *Herster v. Herseter,* 122 Pa. 239 (1889) as follows:

> ". . . . proof of declarations (of the decedent) was not in itself sufficient either to establish the execution of the will, or to overcome the testimony of the subscribing witnesses, and that it was admissible only for the purpose of corroboration." *Swope v. Donnelly,* 180 Pa. 417, 418.

In short, those cases cited by contestants in their brief are inapposite and therefore provide no support for contestants' argument. Furthermore, this Court believes

that there is no support for contestants' theory that the proponents waived the *Swope* rule, or that proponents case in chief is a mass of contradictions and inconsistencies as is argued by contestants in their brief.

The fifth question raised by contestants in their brief corresponds with Exception No. 7 which contends that it was error by the Court to refuse evidence that a proponent and chief beneficiary of the questioned document made declarations contrary to the document and to surrounding circumstances as of May 10, 1968.

It should be noted at the outset that Patricia McFarlane's answer to a question asked by counsel for contestants makes consideration of contestants' exception number seven of merely academic interest. When asked by counsel for contestants whether she had discussions with Elizabeth Cowden concerning what Mrs. Cowden expected to receive under decedent's will, Mrs. McFarlane said, "No." Thus, contestants can hardly complain that it was the Court's ruling that precluded them from introducing evidence of Mrs. Cowden's statements at that point in the trial. Further, contestants are incorrect when they claim that the Court 'precluded' them from introducing evidence of statements of that beneficiary since the Court specifically stated it would permit that evidence at a later point in the trial after a foundation for its relevance had been laid.

Evidence of what a beneficiary under Decedent's Will thinks she may or may not be receiving has utterly no relevance to the issues in the *Ciaffoni* case, and was properly excluded. That a beneficiary may be told, perhaps falsely, by a decedent to expect to inherit certain property is no evidence that decedent's Will is a forgery. Further, the use of statements of interested parties in *Lappe v. Gfeller*, 211 Pa. 462 (1905) cited by contestants as authority for the introduction of Mrs. Cowden's statements,

is of no help to them for two reasons. First, as contestants note in their brief at page 34, in *Lappe, supra*, it was after proponents' case in chief that contestants were permitted to introduce statements of interested parties to show forgery. However, in the *Ciaffoni* case, contestants sought to introduce statements of an interested party at the very outset of proponents' case and before any ground had been laid for its relevance. Secondly, *Lappe, supra*, permitted the use of statements and facts of interested parties in clearly limited circumstances not found in the *Ciaffoni* case. At 211 Pa. 470, the Supreme Court said:

> "The paper itself, having been destroyed by Mrs. Morgenroth, *was not produced* at the trial and hence there was *no opportunity to attack by direct testimony the genuineness of the decedent's signature.* It therefore became necessary for those denying the legality of the paper, and in fact *the only proof* against its validity they could produce was, to show the circumstances, acts and declarations of the interested parties bearing on its validity and genuineness." (Emphasis added)

Contestants sixth and final issue raised in their brief, which corresponds with Exception No. 8, complains that the Court erroneously precluded the contestants from introducing evidence that in the same year, the questioned document was allegedly executed (May 10, 1968), the attorney-scrivener of the questioned document permitted or caused to be filed in the Office of the Clerk of the Orphans' Court of Washington County, a document he knew bore a forged notarization, which document was dated July 17, 1968.

At trial, however, contestants offered the document in order to "give some light on things that were going on in that office that Mrs. Gray knew nothing about." How-

ever, that Mrs. Gray knew or didn't know things happening in the office where she worked bears absolutely no relevance to the issues in the *Ciaffoni* case. Mrs. Gray testified to decedent's execution of his will, which she attended, and to her typing of decedent's Will. That Mrs. Gray may have been ignorant of other matters in her office does not effect her testimony in the slightest. Further, Mrs. Gray's ignorance of other matters in her office has not the slightest significance in proving or disproving whether pages in decedent's Will were substituted. Therefore, the Court properly sustained proponents' objection and excluded this evidence.

Consistent with the foregoing discussion, it is the opinion of this Court that contestants' exceptions to the Court's Order Dismissing the Appeals and upholding the validity of the probated document is denied.

IN THE
COURT OF COMMON PLEAS
OF WASHINGTON COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

---

No. 63 74 942

---

IN RE:

ESTATE OF PAUL CIAFFONI
Deceased.

---

**ORDER**

AND Now, to wit, this 27th day of August, 1979, upon due and careful consideration of the Arguments and Briefs filed herein by both proponents and contestants, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Exceptions filed herein are hereby denied.

By THE COURT,

/s/ EARL S. KEIM *P.J.*

ATTEST:

Clerk

IN THE
SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

---

Nos. 81-1-32 and 81-1-79

---

IN RE: ESTATE OF PAUL CIAFFONI,
Deceased

APPEAL OF ROBERT J. CIAFFONI
(Decedent's Son)

---

Appeals from the decrees of the Orphans' Court Division of the Court of Common Pleas of Washington County at No. 63-74-942, dated December 16, 1980 and July 2, 1981.

---

ARGUED: January 18, 1982.

---

**JUDGMENT**

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that Application is granted. The order of this Court denying reargument is reversed; the order affirming the decree of the orphans' court is vacated. The decree of the orphans' court upholding the validity of decedent's will is vacated and the record remanded for proceedings consistent with this opinion. Costs to be borne by the estate.

By THE COURT:

/s/ IRMA T. GARDNER
Deputy Prothonotary

Dated: May 20, 1982.

IN THE
SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

Nos. 81-1-32 and 81-1-79

IN RE:
ESTATE OF PAUL CIAFFONI,
Deceased

Application of Elizabeth Ciaffoni Cowden, Trustee, for Stay of Record Pending Review in the Supreme Court of the United States

**ORDER**

AND Now, to wit, this 23rd day of July, 1982 it is hereby ordered that a stay be entered and the record in the Will contest is to remain with the Prothonotary of the Supreme Court for a period of ninety (90) days from this date, during which time the proponents of the Will will have the opportunity to file a petition for certiorari with the United States Supreme Court from our decision entered May 20, 1982 and to seek a stay of further proceedings pending the disposition of that petition by the United States Supreme Court.

If the United States Supreme Court fails to grant a stay within this 90-day period, this stay will expire at the expiration of the stated ninety (90) days.

This stay does not preclude the continued administration of the Estate. It is intended merely to forestall any further action in the Will contest.

/s/ NIX, *J.*